

CLARE E. CONNORS 7936  
Attorney General of Hawai'i

WILLIAM J. WYNHOFF 2558  
LINDA L.W. CHOW 4756  
AMANDA J. WESTON 7496  
Deputy Attorneys General  
Department of the Attorney  
General, State of Hawai'i  
Room 300, Kekuanao'a Building  
465 South King Street  
Honolulu, Hawai'i 96813  
Telephone: (808) 587-2985

Attorneys for Defendants BOARD OF  
LAND AND NATURAL RESOURCES;  
DEPARTMENT OF LAND AND  
NATURAL RESOURCES; and SUZANNE  
CASE, in her official capacity as Chairperson  
of the Board of Land and Natural Resources

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

SIERRA CLUB,

Plaintiff,

vs.

BOARD OF LAND AND NATURAL  
RESOURCES; DEPARTMENT OF LAND  
AND NATURAL RESOURCES; SUZANNE  
CASE, in her official capacity as Chairperson of  
the Board of Land and Natural Resources;  
ALEXANDER AND BALDWIN, INC., and  
EAST MAUI IRRIGATION, LLC.

Defendants.

Civil No. 19-1-0019-01 JPC

DEFENDANTS SUZANNE CASE, in her  
official capacity as Chairperson of the Board  
of Land and Natural Resources, BOARD OF  
LAND AND NATURAL RESOURCES, and  
DEPARTMENT OF LAND AND  
NATURAL RESOURCES' **RESPONSE TO  
PLAINTIFF'S FIRST REQUEST FOR  
ANSWERS TO INTERROGATORIES**

No Trial Date Set

**DEFENDANTS SUZANNE CASE, in her official capacity as  
Chairperson of the Board of Land and Natural Resources,  
BOARD OF LAND AND NATURAL RESOURCES, and  
DEPARTMENT OF LAND AND NATURAL RESOURCES’  
RESPONSE TO PLAINTIFF’S  
FIRST REQUEST FOR ANSWERS TO INTERROGATORIES**

Defendants Suzanne Case, in her official capacity as Chairperson of the Board of Land and Natural Resources, Board of Land and Natural Resources, and Department of Land and Natural Resources, (collectively “Defendants STATE”), by and through counsel, pursuant to Rules 26 and 33 of the Hawaii Rules of Civil Procedure, responds to Plaintiff’s First Request for Answers to Interrogatories, dated March 19, 2019, as follows:

**GENERAL RESPONSES AND OBJECTIONS**

1. Defendants STATE object to each request that is so broad, vague, ambiguous, uncertain, and unintelligible that Defendants STATE cannot determine the nature of the response sought, and Defendants STATE therefore is unable to respond.
2. Defendants STATE object to each request to the extent that it asks for the disclosure of attorney-client privileged communications, information that is protected attorney work product, and information concerning documents and tangible things prepared in anticipation of litigation or trial.
3. Objection is made to each Request to the extent that it requests information that is immaterial and irrelevant to the subject matter of this action.
4. Defendants STATE object to each request to the extent that it requests information for which the required good cause or substantial need, as dictated by applicable statutes, court rules and case law, has not been shown.
5. Defendants STATE object to each request to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

6. Defendants STATE state that discovery, investigation, and trial preparation are ongoing and have not been completed. Any and all responses to this discovery request are based only on information and documents available to Defendant STATE at the time these responses and objections were prepared.

7. Objection is made to each request to the extent that it is unreasonably burdensome, oppressive, or vexatious in that the information so acquired would be of little or no relevance to the issues in this case, and/or would place an unreasonable and oppressive burden on the State in expenditure of time, cost and money.

8. Without waiving any of the foregoing objections, which Defendants STATE incorporate by reference in response and/or objection to each of the following individual requests as if fully set forth therein, Defendants STATE respond as follows:

DATED: Honolulu, Hawai'i, April 18, 2019.



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AMANDA J. WESTON  
WILLIAM J. WYNHOFF  
LINDA L.W. CHOW  
Deputy Attorneys General

Attorneys for Defendants SUZANNE  
CASE, in her official capacity as  
Chairperson of the Board of Land and  
Natural Resources, BOARD OF LAND  
AND NATURAL RESOURCES, and  
DEPARTMENT OF LAND AND  
NATURAL RESOURCES

## INTERROGATORIES

1. Describe in detail all the efforts that the BLNR Defendants undertook to determine whether there was any garbage, trash or debris - including discarded or unused pipes - within the area encompassed by revocable permits S-7263 (Tax Map Key (2) 1-1-001:044), S-7264 (Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key (2) 1-1-002:por. 002) and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007) prior to the BLNR's November 2018 decision approving the continuation of the revocable permits.

Answer: Objection. This interrogatory is vague and ambiguous as to time and garbage, trash or debris.

Without waiving said objection, defendants heard extensive testimony at the BLNR meeting before and received extensive documents both before and during the meeting. Sierra Club showed the board some photos purporting to show left over debris in an unspecified area.

2. Describe in detail all the efforts that the BLNR Defendants undertook to determine the extent to which invasive species are growing on the state lands covered by revocable permits S-7263, S-7264, S-7265, and S-7266 prior to the BLNR's November 2018 decision approving the continuation of the revocable permits.

Answer: Objection. This interrogatory is vague and ambiguous as to invasive species.

Without waiving said objection, defendants heard extensive testimony at the BLNR meeting before and received extensive documents both before and during the meeting. Sierra Club showed the board some photos purporting to show left over debris in an unspecified area.

3. How many gallons of water have been diverted daily from Hanehoi stream by Alexander & Baldwin and/or East Maui Irrigation since July 2018?

Answer: There are no gages located on individual diversions, so CWRM cannot determine the amount diverted daily from Hanahoi Stream.

4. How many gallons of water have been diverted daily from Honopou Stream by Alexander & Baldwin and/or East Maui Irrigation since July 2018?

Answer: There are no gages located on individual diversions, so CWRM cannot determine the amount diverted daily from Honopu Stream.

5. How many gallons of water were taken out of east Maui streams daily within the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266, on average, in 2016?

Answer: Objection. As written, this interrogatory is vague, ambiguous and impossible to answer.

Without waiving said objection, CWRM only collects total monthly volumes (million gallons) of water. The daily average flow is based on monthly reported values divided by the number of days in the month. Attached is a summary of gage data for 2016 based on submitted water use reports for EMI-maintained gages at Honopou on the Wailoa, New Hamakua, Lowrie and Haiku ditches. Not all water in each license area is generated from State land, as there are proportions of rainfall that falls on privately-owned parcels.

6. How many gallons of water were taken out of east Maui streams daily within the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266, on average, in 2017?

Answer: Objection. As written, this interrogatory is vague, ambiguous and impossible to answer.

Without waiving said objection, CWRM only collects total monthly volumes (million gallons) of water. The daily average flow is based on monthly reported values divided by the number of days in the month. Attached is a summary of gage data for 2017 based on submitted water use reports for EMI-maintained gages at Honopou on the Wailoa, New

Hamakua, Lowrie and Haiku ditches. Not all water in each license area is generated from State land, as there are proportions of rainfall that falls on privately-owned parcels.

7. How many gallons of water were taken out of east Maui streams daily within the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266, on average, in 2018?

Answer: Objection. As written, this interrogatory is vague, ambiguous and impossible to answer.

Without waiving said objection, CWRM only collects total monthly volumes (million gallons) of water. The daily average flow is based on monthly reported values divided by the number of days in the month. Attached is a summary of gage data for 2018 based on submitted water use reports for EMI-maintained gages at Honopou on the Wailoa, New Hamakua, Lowrie and Haiku ditches. Not all water in each license area is generated from State land, as there are proportions of rainfall that falls on privately-owned parcels.

8. What is the maximum total amount of water that can be taken out of the streams within the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266 pursuant to BLNR's November 2018 authorization?

Answer: Objection. As written, this interrogatory is vague, ambiguous and impossible to accurately answer.

Without waiving said objection, as long as the instream flow standards are met, water can be diverted.

9. Which diversions within the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266 that existed as of November 9, 2018 cause or caused the greatest threat of entrainment of native aquatic species?

Answer: Objection. This interrogatory is vague, ambiguous and assumes facts not in evidence.

10. From which streams is A&B or EMI diverting water and then transferring that water to other streams within the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266?

Answer: Objection. This interrogatory is vague, ambiguous and assumes facts not in evidence.

11. Into which streams is A&B or EMI transferring or dumping water that originates in other streams within the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266?

Answer: Objection. This interrogatory is vague, ambiguous and assumes facts not in evidence.

12. Identify all the revocable permits that BLNR has issued since 1999 to A&B or EMI for Tax Map Key (2) 1-1-001:044, Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017, Tax Map Key (2) 1-1-002:por. 002, and Tax Map Keys (2) 1-2-004:005 & 007.

Answer: Objection. This interrogatory is vague, ambiguous, overly burdensome and not designed to lead to the discovery of relevant or admissible evidence.

13. What is the quantifiable limit on the amount of water (or maximum amount) that can be taken from Kōlea Stream, Punaluu Stream, Kaaiea Stream, Oopuola Stream (Makanali tributary), Puehu Stream, Nailiilihaele Stream, Kailua Stream, Hanahana Stream (Ohanui tributary), Hoalua Stream, Waipio Stream, Mokupapa Stream, and Hoolawa Stream (Hoolawa ili and Hoolawa nui tributaries)?

Answer: Objection. This interrogatory is vague and ambiguous and as written, impossible to accurately answer.

14. Does BLNR' November 9, 2018 decision on the holdover of revocable permits S-7263, S-7264, S-7265, and S-7266, allow Alexander & Baldwin and East Maui Irrigation to take more water from streams than they were taking in 2016, 2017 and 2018?

Answer: Objection. Vague and ambiguous.

Without waiving said objections, the amount of water required to remain in the stream is set by CWRM.

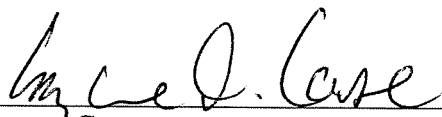
15. Under what authority did BLNR allow A&B and EMI to continue using state land and diverting water from streams within the areas encompassed by the revocable permits S-7263 (Tax Map Key (2) 1-1-001:044), S-7264 (Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key (2) 1-1-002:por. 002) and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007) between the time of Judge Nishimura's January 2016 decision invalidating Revocable Permit Nos. 7263, 7264, 7265 and 7266 and BLNR's decision in December 2016 to holdover the revocable permits?

Answer: In January 2016 there was no mechanism in place enabling the State to continue providing water to the County of Maui while ceasing water flow to A & B. It was not possible to separate out water generated on State land from water generated from private property.

Act 126 went into effect on or about June 27, 2016, authorizing the State to holdover the water permits.


Meanwhile, throughout 2016, EMI was voluntarily and pursuant to CWRM's order, reducing diversions of many of the East Maui streams.

Dated: Honolulu, Hawaii April 18, 2019

  
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Suzanne Case  
Chair, Board of Land and Natural Resources





**From:** Weston, Amanda J Amanda.J.Weston@hawaii.gov   
**Subject:** FW: Sierra Club v. BLNR; Defendant's response to plt. First Interrogs

**Date:** April 21, 2019 at 12:08 PM

**To:** David Kimo Frankel davidkimofrankel@hawaiiantel.net, dschulmeister@cades.com, Trisha Akagi takagi@cades.com

**Cc:** Weston, Amanda J Amanda.J.Weston@hawaii.gov

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Hi:

Please find attached the document referred to in our responses to Plaintiff's First Interrogatories. I'm sorry I forgot to attach it to the responses.

Amanda

Amanda J. Weston  
Deputy Attorney General  
Land Transportation Division  
465 S. King Street, 3<sup>rd</sup> Floor  
Honolulu, Hawai'i 96813  
(808) 587-2985

**Summary of ditch flows at Honopou  
(Wailoa, New Hāmākua, Lowrie, and Ha'ikū Ditches) for CY 2016, 2017, 2018**

**January 2016 to December 2016**

<b>Start Date</b>	<b>End Date</b>	<b>Flow (in mgd)</b>
1/1/2016	1/31/2016	89.39
2/1/2016	2/29/2016	63.31
3/1/2016	3/31/2016	79.42
4/1/2016	4/30/2016	66.46
5/1/2016	5/31/2016	44.37
6/1/2016	6/30/2016	37.66
7/1/2016	7/31/2016	29.54
8/1/2016	8/31/2016	26.93
9/1/2016	9/30/2016	24.23
10/1/2016	10/31/2016	19.99
11/1/2016	11/30/2016	12.70
12/1/2016	12/31/2016	24.99

**January 2017 to December 2017**

<b>Start Date</b>	<b>End Date</b>	<b>Flow (in mgd)</b>
1/1/2017	1/31/2017	22.25
2/1/2017	2/28/2017	25.83
3/1/2017	3/31/2017	25.04
4/1/2017	4/30/2017	20.79
5/1/2017	5/31/2017	24.89
6/1/2017	6/30/2017	21.68
7/1/2017	7/31/2017	24.99
8/1/2017	8/31/2017	22.61
9/1/2017	9/30/2017	NO DATA
10/1/2017	10/31/2017	NO DATA
11/1/2017	11/30/2017	26.43
12/1/2017	12/31/2017	NO DATA

**January 2018 to December 2018**

<b>Start Date</b>	<b>End Date</b>	<b>Flow (in mgd)</b>
1/1/2018	1/31/2018	22.85
2/1/2018	2/28/2018	24.19
3/1/2018	3/31/2018	26.11
4/1/2018	4/30/2018	22.50
5/1/2018	5/31/2018	32.78
6/1/2018	6/30/2018	33.75
7/1/2018	7/31/2018	39.97
8/1/2018	8/31/2018	20.43
9/1/2018	9/30/2018	20.83
10/1/2018	10/31/2018	25.34
11/1/2018	11/30/2018	NO DATA
12/1/2018	12/31/2018	NO DATA